

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSHUA JAMES BIRDRAATTLER,

Defendant.

**Case No. CR-19-57-GF-BMM**

**ORDER**

The Government filed a Motion to Continue Trial in this case due to two essential witnesses to the government's case who reside out of the state of Montana, that will be required to travel across the country during the pandemic to testify at trial and because an essential witness has been infected with COVID-19 and is currently recovering. (Doc. 74.) The Defendant has no objection.

The Government is requesting a 90 day continuance from the current trial setting of September 15, 2020. The Government's motion states that on April 10, 2020, the district court entered an Order amending and superseding Administrative

Order No. 20-17. Administrative Order No. 20-18 In Re: Public Access and Court Operations in Response to Coronavirus COVID-19 Public Emergency (April 10, 2020). The Order was entered in response to the ongoing national and statewide public health emergency due to the spread of a novel coronavirus and the disease it causes, known as COVID-19. As the Order notes, the Centers for Disease Control and Prevention (CDC) and other public health authorities have advised precautions to reduce the possibility of exposure to the virus and slow the spread of the disease. The order vacated all jury trials through May 29, 2020. *Id.* at ¶ 3. The order also provides, “Given the high likelihood that public health considerations will place severe constraints on the pool of the potential jurors and the availability of counsel and court staff, presiding judges in criminal cases are encouraged to evaluate whether any delay occasioned by this order should be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), based on a finding that the ends of justice served by such a delay outweigh the interests of the public and the defendant in a speedy trial.

On March 18, 2020 the undersigned continued the jury trial in this case to June 16, 2020 on the basis of the ongoing corona virus pandemic. (Doc. 69.) The undersigned again continued the jury trial in this case on May 15, 2020 to the current trial schedule. (Doc. 73.) The government states that an additional

continuance is necessary in this case in light of the ongoing pandemic. Two of the government witnesses live out of state and will have to travel across the county to testify. Additionally another government witness is a high risk individual as well as the government attorney. FBI Agent Stacy Smiedala participated in an interview of the defendant in this case. The government believes his testimony is necessary. Smiedala has a pre-existing medical condition and is considered high risk for coronavirus. The government's attorney has a pre-existing medical condition and is also considered high risk for coronavirus. The government also states that an essential witness in this case has been infected with COVID-19 and was hospitalized due to the severity of his coronavirus infection. This witness has been released but is expected to have a lengthy recovery period. Because of these factors, a continuance is necessary.

A district court may grant a continuance and exclude the time period of the continuance from the calculation of the speedy trial date for “[a]ny period of delay resulting from the absence or unavailability of the defendant or an essential witness.” 18 U.S.C. §3161(h)(3)(A).

The Defendant, Joshua Birdrattler has been charged with Aggravated Sexual Abuse, in violation of 18 U.S. C. §§1153(a) and 2241(a)(1). (Doc. 1.)

The Government alleges that Tiffany Smith is an expert witness for the

government. She conducted the DNA analysis in this case. The government believes Smith's testimony is necessary at trial. Rebecca Mitchell conducted the sexual examination on the alleged victim in this case. The government believes Mitchell's testimony is necessary at trial. A continuance of the trial is appropriate under 18 U.S.C. §§3161(h)(3)(A). and under 18 U.S.C. § 3161(h)(7)(A).

Accordingly,

**IT IS ORDERED** that the Government's Motion to Continue Trial (Doc. 75) is GRANTED. The final pretrial conference and jury trial set for September 15, 2020 are **VACATED**. The following schedule shall apply: The final pretrial conference is rescheduled for **December 15, 2020 at 8:30 a.m.** The parties shall report to the chambers of the undersigned. The jury trial is rescheduled for **December 15, 2020 at 9:00 a.m.** in the Charles N. Pray Courtroom at the Missouri River Federal Courthouse, Great Falls, Montana. Motions due and fully briefed by **November 15, 2020**. The plea agreement/notice of intent to proceed to trial deadline is **December 1, 2020**. Expert reports are due on or before **December 3, 2020**. The Jury Instructions and Trial Briefs are due by **December 8, 2020**.

**All time between the date of this Order and December 15, 2020, shall be excluded for purposes of speedy trial.**

DATED this 24<sup>th</sup> day of August, 2020.

A handwritten signature in blue ink, reading "Brian Morris". The signature is fluid and cursive, with the first name "Brian" and last name "Morris" clearly distinguishable.

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Brian Morris, Chief District Judge  
United States District Court